IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

Supreme Court, U. S.
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No. 73-2012

SEATTLE TRUST & SAVINGS BANK, et al., *Petitioners,*

vs.

THE BANK OF CALIFORNIA, N.A., and THE COMPTROLLER OF THE CURRENCY, *Respondents.*

No. 73-2037

WILLIAM L. HART, etc., *Petitioner,*

vs.

THE BANK OF CALIFORNIA, N.A., et al., *Respondents.*

BRIEF OF RESPONDENT THE BANK OF CALIFORNIA, NATIONAL ASSOCIATION, IN OPPOSITION TO PETITIONS FOR WRITS OF CERTIORARI

NOBLE K. GREGORY
WILLIAM I. EDLUND
ROBERT M. WESTBERG
WALTER J. ROBINSON; III
225 Bush Street, 19th Floor
San Francisco, California 94104
PAUL W. STEERE
14th Floor Norton Building
Seattle, Washington 98104
Attorneys for Respondent
The Bank of California, National Association

PILLSBURY, MADISON & SUTRO
225 Bush Street, 19th Floor
San Francisco, California 94104
BOGLE, GATES, DOBRIN,
WAKEFIELD & LONG
14th Floor Norton Building
Seattle, Washington 98104
Of Counsel

PERNAU-WALSH PRINTING CO. - 582 MISSION STREET - SAN FRANCISCO, CA 94105

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PRELIMINARY STATEMENT

Respondent The Bank of California, National Association, files this brief in opposition to the two separate petitions for certiorari to the United States Court of Appeals for the Ninth Circuit in *Seattle Trust & Savings*

Bank v. Bank of California, N.A. (9 Cir. 1974) 492 F.2d 48.[1]

The decision of the court below is not only correct but does not conflict with any decision of this or any other appellate court and presents no important federal question which would justify review by this Court.

STATEMENT OF THE CASE

The statements of the case set forth in the petitions for certiorari are incomplete. Respondent The Bank of California, National Association, one of the two national banks which are authorized to operate in more than one state (Appendix C to Petition of Seattle Trust, et al., p. A22; Petition of Hart, p. 6), had two banking offices in Washington, the main office in Seattle and a smaller one in Tacoma. In 1970 it applied to the Comptroller of the Currency for permission to relocate its Seattle office and to establish a branch at the site of its existing office. Petitioners Seattle Trust, et al., seven of the largest banks in Washington,[2] made no objection to the new main

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[1]One of the petitions, No. 73-2012, was filed by seven banks and will be referred to as "Petition of Seattle Trust, et al." The other, No. 73-2037, was filed by William L. Hart, the Supervisor of Banking of the State of Washington and will be referred to as "Petition of Hart."

[2]These seven banks have over 400 banking offices in Washington and over 31 in downtown Seattle. They include Seattle First National Bank, National Bank of Commerce, a subsidiary of Marine Bancorporation, Inc., and Pacific National Bank of Washington, a subsidiary of Western Bancorporation, a multistate bank holding company with operations in eleven western states (see also *United States v. Marine Bancorporation, Inc., et al.*, No. 73-38 (June 26, 1974) ___ U.S. ___, ___, 42 LW 5210, 5212, 5222).

office but objected to the continuation of the old office where The Bank of California had been doing a full service banking business for over 50 years.

The Comptroller, after an extensive investigation, approved the application to establish a second Seattle office (Appendix C to Petition of Seattle Trust, et al., pp. A17-31). Petitioners, Seattle Trust, et al., filed an action in the district court attempting to preclude The Bank of California from maintaining that office. The Washington Supervisor of Banking and the Comptroller of the Currency intervened. The district court entered judgment for respondents (see Appendix B to Petition of Seattle Trust, et al., pp. A11-16).

Petitioners appealed to the Court of Appeals for the Ninth Circuit, which affirmed (Appendix A to Petition of Seattle Trust, et al., pp. A1-10) on the ground that the Comptroller had correctly construed the federal and state statutes (pp. A5-8, A9-10) and, to the extent that any question of fact might be involved, the district court had correctly found "that the evidence before the Comptroller amply supported his finding that without the right to branch in Seattle, the Bank of California would suffer a competitive disadvantage within the State of Washington" (p. A8).

ARGUMENT

I. THE INTERPRETATION BY THE COURT OF APPEALS OF THE NATIONAL BANK ACT AFFECTS ONLY TWO NATIONAL BANKS, IT DOES NOT CONFLICT WITH ANY DECISION OF ANY OTHER COURT OF APPEALS OR OF THIS COURT, AND PRESENTS NO IMPORTANT QUESTION WHICH WOULD JUSTIFY REVIEW BY THIS COURT.

The interpretation of § 36(c) of the National Bank Act[3] by the court below is not only correct but, in any event, will at most have significance with respect to The Bank of California and South Jersey National Bank—the only two national banks authorized to engage in banking in more than one state (Appendix C to Petition of Seattle Trust, et al., p. A22; Petition of Hart, p. 6).

There is nothing in the opinion of the court of appeals which justifies petitioners' erroneous assertions that the court determined that the word "situated" in § 36(c) of the National Bank Act "means no more than physical presence" (Petition of Seattle Trust, et al., p. 6) or that the reasoning of the opinion supports the view that "a national bank is 'situated' for branching purposes in any state in which it maintains a loan production office or public relations or representative office" (ibid., p. 7). The court merely held—in accordance with the plain terms of § 36(c) (Appendix A to Petition of Seattle Trust, et al., p. A7) and other provisions of the Bank Act (pp. A5-6), in

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[3]Section 36(c) of the National Bank Act (R.S. § 5155, as amended by 66 Stat. 633, 12 U.S.C. § 36(c)), provides in relevant part:

> "A national banking association may, with the approval of the Comptroller of the Currency, establish and operate new branches: * * * at any point within the State in which said association is *situated* * * *" (emphasis added).

The full text of § 36(c) is set forth in Appendix D to Petition of Seattle Trust, et al., pp. A33-34.

accordance with a prior ruling of a Washington court (p. A7) and the prior practical construction by the Washington Supervisor of Banking (p. A7), and in accordance with the evidence (p. A8)—that The Bank of California was in fact situated in Seattle, Washington, where it has maintained a full service banking office for over 50 years.

The decision of the court of appeals is not only in accord with the necessary interpretation of the provisions of the National Bank Act but also with the congressional policy of competitive equality, which petitioners admit underlies the congressional intent of § 36(c) (Petition of Seattle Trust, et al., p. 10; Petition of Hart, p. 7). As the court of appeals held:

> "Section 36(c) (1) and (2) of the Act must be interpreted in the light of congressional desire to foster a climate of 'competitive equality' between national and state banks; it is not for the courts, in construing the Act, to frustrate that clear congressional purpose. *First National Bank of Logan, Utah v. Walker Bank and Trust Co.*, 385 U.S. 252, 261, *reh. den.*, 385 U.S. 1032 (1966). In determination of this application to branch, the Comptroller made extensive factual inquiry into the banking industry in Seattle. The record establishes that branch banking there has grown at an accelerating rate. The number of competing branches in downtown Seattle has doubled in the last ten years. Based on his investigation, the Comptroller found the Bank of California unable to compete equally with state and national banks authorized to branch freely in Seattle. The District Court found that the evidence before the Comptroller amply supported his finding that without the right to branch in Seattle, the Bank of California would suffer a competitive disadvantage within the

State of Washington" (Appendix A to Petition of Seattle Trust, et al., pp. A7-8).[4]

Petitioners erroneously assert that what they refer to as the "grandfather rights" of The Bank of California, under which it was granted the right to operate in more than one state, are in some way inconsistent with the decision of the court below (Petition of Seattle Trust, et al., p. 11; Petition of Hart, p. 9). They ignore, however, the fact that multistate holding company operations (such as that of petitioner Pacific National Bank of Washington) have similar grandfather rights, and as the Comptroller pointed out,

> "Thus, in enacting the Holding Company Act of 1956, 70 Stat. 133, Congress, in effect, recognized interstate bank operations and determined to place no federal restriction upon branching within the states in which a Holding Company's banks maintained banking offices at the time of the Act's enactment. See 12 U.S.C. §§1841, 1842. Inasmuch as The Bank of California must compete in Washington with banks permitted to branch freely within the state as part of multi-state holding company operations, a restriction upon The Bank of California's branching authority within Washington would only serve to perpetuate a basic competitive inequality in a manner at least inconsistent with Congressional policy in the Holding Company Act" (Appendix C to Petition of Seattle Trust, et al., p. A26).

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[4]There is no basis for the suggestion in the Petition of Seattle Trust, et al. (p. 9) that this holding is in some way contrary to the opinion of the Illinois Supreme Court in *Boatmen's National Bank v. Hughes* (1944) 385 Ill. 431, 53 N.E.2d 403. In the *Boatmen's* case, the bank had offices *only* in the State of Missouri, and was attempting to establish a branch bank in Illinois, a state which prohibited any branch banking.

II. THIS COURT SHOULD NOT REJECT THE CONSIDERED INTERPRETATION OF STATE LAW BY THE COURT OF APPEALS.

Petitioners ask this Court to determine a question of state law contrary to the considered interpretation of the court of appeals. As this Court has frequently pointed out,

> "'[w]e ordinarily accept the determination of local law by the Court of Appeals . . . and we will not disturb it here.' *Ragan v. Merchants Transfer Co.*, 337 U. S. 530, 534 (1949); *General Box Co. v. United States*, 351 U. S. 159, 165 (1956); *The Tungus v. Skovgaard*, 358 U. S. 588, 596 (1959)" *(Commissioner v. Estate of Bosch* (1967) 387 U.S. 456, 462).

The Washington statute, RCW 30.40.020, provides:

> "A bank * * * having a paid-in capital of not less than five hundred thousand dollars may, with the approval of the supervisor, establish and operate branches in any city or town within the state. * * *
>
> * * * * *
>
> "No bank * * * shall establish or operate any branch * * * in any city or town outside the city or town in which its principal place of business is located * * * except by taking over or acquiring an existing bank."

Petitioners argue that, under Washington law, respondent can expand only by the acquisition of a competing bank (Petition of Seattle Trust, et al., p. 12, ftn. 8). The court of appeals rejected this anticompetitive argument (cf. *United States v. Marine Bancorporation, Inc., et al.*, No. 73-38 (June 26, 1974) ..... U.S. ....., 42 LW 5210,

5212).[5] It interpreted the Washington statute as referring to a bank's principal place of business within the State of Washington. The court pointed out that

> "this construction is supported by the words 'within the state' in the first sentence of RCW 30.40.020. Interpretation of this statute to mean a 'principal place of business' outside of the jurisdiction would be an awkward and strained application of Washington banking laws which regulate only banking activities within Washington. This view is further supported by the past practice of the Washington Supervisor of Banking in its relations with the Bank of California. In day to day administration of banking activities within Washington, the Supervisor has treated Seattle as the principal place of business of the Bank of California.
>
> "The principle of competitive equality, discussed above, reinforces this interpretation of RCW 30.40.020. Since all state banks may branch freely within one city of the state, forbidding the Bank of California comparable banking opportunity is anti-competitive and runs counter to the clear policy of Congress as manifest in the National Banking Act" (Appendix A to Petition of Seattle Trust, et al., pp. A9-10).

We submit that petitioners present no justification for this Court to set aside this considered determination of state law.

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[5]It is noteworthy that petitioners (one of whom, National Bank of Commerce, was a successful appellee in the *Marine Bancorporation* case and a subsidiary of Marine Bancorporation, Inc., another appellee in that case) ask this Court, by interpretation, to impose even more stringent restraints on competition than required by the express terms of the Washington statute (..... U.S. ....., 42 LW 5212).

CONCLUSION

For the foregoing reasons, we respectfully submit that the petitions for certiorari should be denied.

NOBLE K. GREGORY
WILLIAM I. EDLUND
ROBERT M. WESTBERG
WALTER J. ROBINSON, III
PAUL W. STEERE
Attorneys for Respondent
The Bank of California, National Association

PILLSBURY, MADISON & SUTRO
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WAKEFIELD & LONG
Of Counsel